

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 994 - HB 1146

April 13, 2015

SUMMARY OF ORIGINAL BILL: Increases, from 30 to 45 days, the period of time in which a hospital must file a notice of termination upon terminating a cooperative agreement with another hospital.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (006065): Expands the definition of cooperative agreement with regards to the *Hospital Cooperation Act of 1993*, by specifying that a cooperative agreement means an agreement among two or more hospitals for the “consolidation by merger or other combination of assets, offering, provision, operation, planning, funding, pricing, contracting, utilization review, or management of health services” for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by hospitals.

Establishes that it is the policy of this state to lessen competition among hospitals, while maintaining regulation of such hospitals to the extent required by law, in order to promote cooperation and coordination among hospitals in the provision of health services and to provide state action immunity from federal and state antitrust law to the fullest extent possible to those hospitals issued a certificate of public advantage.

Extends the period of time, from 90 to 120 days, by which the Department of Health (DOH) must grant or deny an application for a certificate of public advantage from the date the application was received by DOH. Authorizes any intervenor aggrieved by a decision of DOH to grant or deny an application for a certificate of public advantage to appeal the Department’s decision, except that there shall be no stay of the Department’s decision unless the administrative judge or court of competent jurisdiction has issued a stay accompanied with a supersedeas bond as issued by the intervenor. If intervenor’s appeal to the Department is unsuccessful, such intervenor is responsible for the costs of the appeal and attorney’s fees of the applicant.

Expands the criteria which DOH must consider when reviewing the benefits that may result from a proposed cooperative agreement.

Requires DOH to annually review each certificate of public advantage; however, upon the Department determining that the likely benefits of any such agreement between hospitals no longer outweigh any disadvantages attributable to any potential reduction in competition

SB 994 - HB 1146

resulting from the agreement, DOH will be required to first seek modification of the agreement with consent of the respective hospitals that are parties to the agreement. If a modification to the agreement is not obtained, only then may the Department, at the request of the certificate holder, initiate contested case proceedings to terminate the respective certificate of public advantage. Expands the period of time, from 30 to 45 days, in which any party to a cooperative agreement must file a notice of termination with DOH upon termination of the agreement. With regards to judicial review of a determination regarding the granting, denying, refusing to act or termination of a certificate of public advantage, specifies that a certificate of public advantage does not constitute a property right or interest of the recipient.

If DOH determines that the applicants to the certificate of public advantage have not clearly and convincingly established that the benefits of the agreement outweigh any disadvantages attributable to a reduction in competition resulting from such agreement, the agreement is invalid and has no further force or effect, except that the state action immunity and the Department's active supervision is required to continue until the plan of separation has been determined by the Department to be complete.

Requires parties to a cooperative agreement to pay charges incurred in the examination of an application to a certificate of public advantage, as well as the charges incurred for subsequent review of certificate holders and ongoing supervision of the agreement, including the expenses of the Commissioner of DOH and the Commissioner's assistants, including, but not limited to experts and examiners employed in the examination and review. Authorizes the Commissioner to contract with qualified experts. The Commissioner is required to set fixed compensation to meet expenses and compensation for the full cost of providing such examination and review.

Removes DOH's authority to promulgate necessary rules or regulations in administering the *Hospital Cooperation Act of 1993* in accordance with the *Uniform Administrative Procedures Act*, and specifies that any applicable rules are not necessary. This proposed legislation will take effect upon becoming law.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue - \$362,500/Recurring

**Increase State Expenditures - \$9,400/One-Time
\$353,100/Recurring**

Assumptions for the bill as amended:

- According to the DOH, it does not possess the expertise to fully analyze an application for a certificate of public advantage; therefore, the Department will require additional staffing as well as utilization of external consultants for the initial and on-going analysis required of this amendment.
- DOH will require an additional statistical research specialist and a senior level auditor in the Office of Health Planning and Office of Compliance, in order to effectively carry out the provisions of this amendment.

- An increase in recurring state expenditures resulting from two new personnel of \$223,088 (salaries \$139,980 + benefits \$63,000 + FICA \$10,708 + office lease \$8,200 + supplies \$1,200).
- An increase in one-time state expenditures of \$9,400 (2 notebook computers with remote connection \$4,000 + office furniture \$5,400).
- Based on information provided by DOH, it will incur additional recurring expenditures of \$130,000 in obtaining regionally-specific data (\$20,000), travel and public meetings (\$10,000), and contracting outside expert consultants (\$100,000).
- Total increase in recurring state expenditures of \$353,088 (\$223,088 + \$130,000).
- This amendment requires the parties to a cooperative agreement reimburse DOH for the costs incurred in reviewing initial applicants and current certificate holders. The Commissioner will fix commensurate fees to reimburse the Department for such costs. The increased revenue is estimated to be \$362,488 (\$9,400 one-time expenditures + \$353,088 recurring expenditures).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

/jdb